

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official  
capacity as State Treasurer of  
North Carolina, *et al.*,

Defendants.

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Civil Action No.  
1:19-cv-272-LCB-LPA

**JOINT-CONSENT MOTION TO EXTEND DEADLINES  
FOR FILING OF DISPOSITIVE MOTIONS PLEADINGS**

NOW COME Defendants North Carolina State Health Plan for Teachers and State Employees, Plan Administrator Dee Jones, and North Carolina Treasure Dale Folwell (collectively the “Plan Defendants”), jointly with the Plaintiffs and Defendant North Carolina Department of Public Safety, pursuant to Rules 6(b) and 16(b)(4), Fed. R. Civ. Proc., and L.R. 6.1 and 26.1(d), M.D.N.C., for entry of an Order extending the deadline to file dispositive motions so that opening briefs would be due December 15, 2021, Response Briefs would be due January 17, 2022, and Reply Brief would be due January 31, 2022. All parties jointly request and consent to the granting of the requested relief. In support of this motion, Plan Defendants show as follows:

### **Procedural Background**

1. On March 11, 2019, Plaintiffs filed their first Complaint. [D.E. 1]
2. On July 29, 2020, the original Parties filed their joint report of the initial attorneys' conference pursuant to Rule 26(f). [D.E. 61]
3. On August 13, 2020, the Court adopted the original Parties' joint report including the scheduling deadlines set forth in the report.
4. On August 3, 2020, Plaintiffs filed a motion to amend the complaint seeking to add the NC Department of Public Safety ("DPS") as a party.
5. On March 5, 2021, the Court granted Plaintiffs' motion to amend the complaint, [D.E. 74] and Plaintiffs' First Amended Complaint was filed on March 9, 2021. [D.E. 75]
6. The deadline for the close of all Discovery was September 30, 2021, however, on September 28, 2021, the Court extended the deadlines for the limited purposes of taking the expert witness depositions of Dr. Paul McHugh (presently until October 15, 2021) and Dr. Randi C. Ettner (until October 22, 2021).

### **The Volume of Discovery**

7. The discovery in this case is voluminous, and the parties jointly agree that additional time is necessary to adequately review and process the discovery in this complex multi-party matter.

8. Throughout the discovery period, the parties have worked cooperatively to exchange more than a half million pages of discovery. This includes several thousand pages of discovery produced in September 2021. The parties have also worked cooperatively to appropriately designate confidential and sensitive medical information pursuant to the Protective Order in this case.

9. The expert report disclosures, including attachments, are approximately 900 pages.

10. To date, the completed depositions transcripts exceed 2,400 pages, and the parties estimate that this number will likely exceed 5,000 pages as the remaining nine (9) deposition transcripts are finalized.

11. Because of Dr. McHugh and Dr. Ettner's medical complications, and the need to take their depositions in October 2021, the current deadlines for the filing of dispositive motions could require the parties to submit their opening briefs 6 business days after the conclusion of the last expert witness's deposition.

### **Additional Considerations**

12. Counsel for NCDPS, who has been the sole counsel appearing in this matter thus far, has a federal jury trial scheduled to begin in the Western District of North Carolina on October 25, 2021—making compliance with the existing deadline extremely difficult, if not impossible.

13. The parties believe this extension request should have no impact on the projected start of the trial, currently set for July 2022.

14. A Proposed Order is attached.

WHEREFORE the Parties jointly and respectfully request that the Court enter an Order extending the deadline to file dispositive motions in the case.

Respectfully submitted, this the 6<sup>th</sup> day of October, 2021.

/s/ John G. Knepper  
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